



Attorney Docket No.: P12856  
EUS/JJP/05-9285

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November 21, 2004

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Commissioner for Patents  
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Date: November 21, 2004

Pamela S. Newton  
Pamela S. Newton

Re: Patent Application for:  
"BASE TRANSCEIVER STATION AUTOMATIC ENCRYPTION HANDLING"  
Serial No. 09/439,162  
Attorney Docket No. P12856-US1

Dear Sir:

Enclosed for filing please find the following items relating to the above-identified application:

- (1) Request for Reconsideration Regarding Dismissal of Petition to Withdraw Holding of Abandonment (2 pages); and

The commissioner is hereby authorized to charge any additional fees associated with this communication or credit any overpayment to Deposit Account No. 50-1379.

Should you have any questions or comments concerning this matter, please feel free to contact the undersigned at 972/583-1572.

Sincerely,

Steven W. Smith  
Reg. No. 36,684

SWS/psn

Ericsson Inc.  
6300 Legacy Drive  
Plano, Texas 75024

Telephone: 972.583.0000



Attorney Docket No. P12856

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

NOV 21 2005

Applicant: Mikael Rosenhed  
Serial No: 09/439,162  
Filed: November 12, 1999

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§

Group Art Unit: 2132  
Examiner: Lanier, Benjamin E

For: BASE TRANSCEIVER STATION AUTOMATIC ENCRYPTION HANDLING

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Commissioner for Patents  
P. O. Box 1450  
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Date: November 21, 2005

*Pamela S. Newton*  
Pamela S. Newton

**REQUEST FOR RECONSIDERATION REGARDING DISMISSAL OF  
PETITION TO WITHDRAW HOLDING OF ABANDONMENT  
UNDER 37 C.F.R. § 1.181 and 1.8(b)**

The Applicant filed a Petition to Withdraw a Holding of Abandonment Under 37 CFR 1.181 and 1.8(b) on November 3, 2004. In a paper dated November 7, 2005, Special Program Examiner Vincent N. Trans dismissed the petition for failure to include a statement attesting to the facts on a **personal knowledge level** in accordance with 1.8(b)(3). The Applicant respectfully contends this dismissal was improper.

Both the Petition to Withdraw the Holding of Abandonment and the timely filed Response to the Final Office Action were signed by the same person, namely the Applicant's attorney, Steven W. Smith, Registration No. 36,684. Therefore, the Petition was obviously filed on the basis of personal knowledge.

Applicant notes that 37 CFR 1.8(b)(3) states that correspondence that was timely filed but not received by the USPTO will be considered timely filed if the party who forwarded the correspondence:

...  
(3) Includes a statement which attests on a personal knowledge basis *or to the satisfaction of the Commissioner* to the previous timely mailing or transmission. If the correspondence was sent by facsimile

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Attorney Docket No. P12856

transmission, a copy of the sending unit's report confirming transmission may be used to support this statement. (Emphasis added).

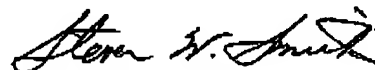
Applicant notes that this rule does not require a statement attesting to the facts on a **personal knowledge level** in all cases. The Rule says "...[OR] to the satisfaction of the Commissioner." In fact, the Rule implies that if the Petitioner includes a copy of the sending fax unit's report confirming transmission, then the Petitioner has met the requirement to submit a statement *to the satisfaction of the Commissioner*.

Applicant respectfully submits that the requirement for a statement attesting to the facts on a **personal knowledge level** is intended by the Rule to apply to cases in which the Petition is filed by someone other than the person who filed the Response to the Office Action. Otherwise, the Rule would have the ridiculous requirement that the Petitioner provide a redundant statement attesting to the fact that he has personal knowledge that he, himself, filed a timely response. In the present case, the Applicant's attorney, Steven W. Smith, signed both the Petition and the Response. Therefore, it would be a ridiculous requirement to also require a personal knowledge statement when the evidence is right in front of the reader that the Petitioner had personal knowledge.

In dismissing the Petition, Examiner Tran also noted that the fax number to which the Response was sent was different from the fax number suggested in the Office Action. Applicant kindly reminds the Examiner that the USPTO rules changed during that time frame to require that all correspondence be faxed to the central fax number. The Response was correctly faxed to the central fax number.

Applicant respectfully requests that someone at the USPTO use some common sense and grant the Petition so that this case, which was determined in the telephone interview of March 15, 2004 to be allowable, can proceed to issue.

Respectfully submitted,



Steven W. Smith  
Registration No. 36,684

Date: Nov. 21, 2005

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